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SUPREME COURT, U. S.

NO. 780

Supreme Court of the United States

October Term, 1970

LEE MARSHALL HARRIS and
MORRIS RAY CALDWELL,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent

MOTION FOR LEAVE TO FILE AMENDMENT TO PETITION FOR CERTIORARI, AND AMENDMENT TO PETITION

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STATEMENT

Petitioners, Lee Marshall Harris and Morris Ray Caldwell, filed, on September 30, 1970, a Petition for Writ of Certiorari to review a decision of the Court of Appeals for the Ninth Circuit. Subsequent to the date of such filing, petitioners have become aware of a substantial question which was not, but should have been, presented in that Petition. (See Stay Order of Justice Douglas in the above-entitled case, entered October 10, 1970). The question which should be considered involves the jurisdiction of the court below.

WHEREFORE, petitioners respectfully move this Court to allow them to amend the Petition for Writ of Certiorari

already filed in this Court.

Respectfully submitted,

MARKS, SHERMAN & LONDON

BY: BURTON MARKS

Attorneys for Petitioner
Morris Ray Caldwell

LEE MARSHALL HARRIS and
MORRIS RAY CALDWELL,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent

AMENDMENT TO PETITION

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4 **Whether 18 U.S.C. 1404 Conferred Jurisdiction In The Court Of Appeals To Consider The Appeal Of Respondent.**

28 U.S.C. 1404:

"In addition to any other right to appeal, the United States shall have the right to appeal from an

order granting a motion for the return of seized property and to suppress evidence made before the trial of a person charged with a violation of–

"(1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

"(2) subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U S C , sec 174), or

"(3) the Act of July 11, 1941, as amended (21 U.S.C , sec. 184a).

This section shall not apply with respect to any such motion unless the United States attorney shall certify, to the judge granting such motion, that the appeal is not taken for purposes of delay. Any appeal under this section shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted "

Respectfully submitted,

MARKS, SHERMAN & LONDON

BY: BURTON MARKS

Attorneys for Petitioner
Morris Ray Caldwell

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, State of California, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 322 Main Street, Huntington Beach, California 92648, that on NOVEMBER 4th, 1970, I served the within MOTION FOR LEAVE TO FILE AMENDMENT TO PETITION FOR CERTIORARI, AND AMENDMENT TO PETITION (No. 780 – Harris - Caldwell v. United States) on the following named parties by depositing the designated copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

UNITED STATES ATTORNEY
FOR THE CENTRAL DISTRICT OF CALIFORNIA
12TH FLOOR
U. S COURTHOUSE
LOS ANGELES, CALIFORNIA 90012 (3 copies)

SOLICITOR GENERAL OF THE UNITED STATES
WASHINGTON, D. C. (3 copies)

U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT
SEVENTH & MISSION STREETS
SAN FRANCISCO, CALIFORNIA (1 copy)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on NOVEMBER 4th, 1970, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Standefer